

HOUSE No. 1594

By Mr. Walsh of Boston, petition of Martin J. Walsh and others relative to workers' compensation. Labor and Workforce Development.

The Commonwealth of Massachusetts

PETITION OF:

| | |
|------------------------|--------------------|
| Martin J. Walsh | Robert K. Coughlin |
| Robert J. Haynes, | John A. Hart, Jr. |
| President of | Karen E. Spilka |
| Massachusetts AFL-CIO | Joseph R. Driscoll |
| Michael F. Rush | John J. Binienda |
| Brian P. Wallace | Kevin G. Honan |
| Kathi-Anne Reinstein | Matthew C. Patrick |
| Thomas M. McGee | Steven A. Tolman |
| Michael E. Festa | John D. Keenan |
| Ruth B. Balser | Kathleen M. Teahan |
| Christine E. Canavan | Mark V. Falzone |
| Richard T. Moore | Benjamin Swan |
| Christopher G. Fallon | Joyce A. Spiliotis |
| Paul J. Donato | Steven M. Walsh |
| Timothy J. Toomey, Jr. | Thomas M. McGee |

In the Year Two Thousand and Five.

AN ACT RELATIVE TO WORKERS' COMPENSATION.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Subsection (7A) of Chapter 152 of the General
2 Laws, as now appearing, is hereby amended by adding the
3 following sentence after the fourth sentence as so appearing:—
4 An administrative Judge shall take into consideration the
5 employee's pre-injury employment in determining whether the
6 injury remains a major but not necessarily predominant cause of
7 disability and need for treatment.

1 SECTION 2. Section 13 of M.G.L. c. 152 shall be amended as
2 follows: to the last sentence of the first paragraph of subsection
3 (1), delete “.” and add “provided, any rate set by the rate setting
4 commission shall not be less than 80% of the usual and customary
5 fee for any such health care service.”

1 SECTION 3. Section 14, Subsection 1 of Chapter 152, as cur-
2 rently appearing is amended by adding the following language
3 after the word “proceedings” currently appearing therein:—
4 “including an employee’s claim for medical benefits pursuant to
5 sections 13 & 30 of this chapter.”

1 SECTION 4. Section 30 of M.G.L. c. 152 shall be further
2 amended as follows: following the last sentence in the first para-
3 graph, add “In any case in which the provision of health care serv-
4 ices is an issue and it is reasonably expected that a delay or denial
5 may result in harm to the employee, the employee may request an
6 emergency conference before an Administrative Judge concerning
7 the sole issue of the provision of health care services. Such
8 request may be made following a referral to dispute resolution and
9 upon information, including a medical record indicating that the
10 health care services sought are reasonable, necessary and related
11 to the industrial injury or illness at issue.”

1 SECTION 5. Section 30 of M.G.L. c. 152 shall be amended as
2 follows: delete the first sentence of the second paragraph and add
3 “From time to time, the commissioner shall promulgate regula-
4 tions regarding the provision of adequate and reasonable health
5 care services; provided such regulations shall identify no more
6 than five treatment guidelines representing five of the most
7 common industrial injuries or illnesses for which utilization
8 review shall be required.” Following the last sentence of the
9 second paragraph, add “Otherwise the determination of whether
10 any provision of health care services is reasonable or adequate
11 shall be made by the Administrative Judge pursuant to sections
12 10A, 11 and 11 A of the Act.”

1 SECTION 6. Section 30, of Chapter 152, as now appearing by
2 inserting at the end thereof the following paragraph:—

3 Any insurer who provides utilization review programs or con-
4 tracts with agents to provide utilization review programs shall
5 comply with any regulations promulgated regarding utilization
6 review programs, including the time limitations set forth therein.
7 Failure to comply with said regulations shall result in a determina-
8 tion that the requested health care services shall be deemed
9 approved.

1 SECTION 7. Chapter 152, Section 34, of the General Laws, as
2 now appearing, is hereby amended by striking out the first sen-
3 tence of Section 34 as so appearing, and inserting in place thereof,
4 the following sentence:

5 Section 34. While the incapacity for work resulting from the
6 injury is total, during each week of incapacity, the insurer shall
7 pay the injured employee a weekly compensation equal to two-
8 thirds of his average weekly wage before the injury, but not more
9 than the maximum weekly compensation rate, unless the average
10 weekly wage of the employee is less than the minimum weekly
11 compensation rate, in which case said weekly compensation shall
12 be equal to his average weekly wage.

1 SECTION 8. Chapter 152 of the General Laws, as now
2 appearing is hereby amended by striking out Section 35 and
3 inserting in place thereof the following section:—

4 Section 35. While the incapacity for work resulting from the
5 injury is partial, during each week of incapacity the insurer shall
6 pay the injured employee a weekly compensation equal to sixty
7 percent of the difference between his or her average weekly wage
8 before the injury and the weekly wage he or she is capable of
9 earning after the injury. An insurer may reduce the amount paid to
10 an employee under this section to the amount at which the
11 employee's combined weekly earnings and benefits are equal to
12 two times the average weekly wage in the commonwealth at the
13 time of such reduction.

14 The total number of weeks of compensation due the employee
15 under this section shall not exceed two hundred sixty; provided,
16 however, that this number may be extended to five hundred
17 twenty if an insurer agrees or an administrative judge finds that
18 the employee has, as a result of a personal injury under this

19 chapter, suffered a permanent loss of seventy-five percent or more
20 of any bodily function or sense specified in paragraph (a), (b), (e),
21 (f), (g), or (h) of subsection (1) of section thirty-six, developed a
22 permanently life-threatening physical condition, or contracted a
23 permanently disabling occupational disease which is of a physical
24 nature and cause, or has returned to employment pursuant to an
25 Individual Written Rehabilitation Plan pursuant to Section 30(H);
26 or has been found unsuitable for vocational rehabilitation by the
27 Office of Education and Vocational Rehabilitation; or has returned
28 to employment at less than his preinjury average weekly wage; or
29 has been found by an administrative judge to have a permanent
30 partial incapacity. Where applicable, losses under this section
31 shall be determined in accordance with standards set forth in the
32 American Medical Association Guides to the Evaluation of Per-
33 manent Impairments. Where the insurer agrees or the administra-
34 tive judge finds such permanent partial disability as is described
35 in this paragraph, the total number of weeks the employee may
36 receive benefits under this section shall not exceed five hundred
37 twenty. Where there has been no such agreement or finding the
38 number of weeks the employee may receive benefits under these
39 sections shall not exceed three hundred sixty four.

1 SECTION 9. Section 36 of Chapter 152 of the General Laws,
2 as now appearing, is hereby amended by striking out subsection
3 (k) and substituting in its place the following paragraph:—

4 Subsection (k). For bodily disfigurement, an amount which,
5 according to the determination of the member or reviewing board,
6 is a proper and equitable compensation, not to exceed fifteen
7 thousand dollars; which sum shall be payable in addition to all
8 other sums due under this section.

1 SECTION 10. Section 46A of Chapter 152 as currently
2 appearing is amended by adding the following paragraph:—

3 Notwithstanding any general or special law to the contrary, in a
4 case of person who has filed a claim for injury under the provi-
5 sions of chapter 152 of the General Laws and such claim is dis-
6 puted and not accepted by the workers' compensation insurer and
7 such person has coverage under a policy of accident and sickness
8 insurance, the health insurer shall provide reasonable and neces-

9 sary medical benefits for such person until and unless an adminis-
10 trative judge of the division of industrial accidents issues an order
11 directing the workers' compensation insurer to provide medical
12 benefits pursuant to said chapter 152.